

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_)  
IN THE MATTER OF: )

\_\_\_\_\_)  
E.I. du Pont de Nemours and Co. )  
RESPONDENT )  
\_\_\_\_\_)

1991 OCT -1 P 2:27

Docket No. TSCA-96-H-47

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency ("EPA"); and Respondent, E.I. du Pont de Nemours and Co., the parties herein; having consented to entry of this Consent Agreement and Consent Order before the taking of any testimony and without any adjudication of any issue of fact or law, consent to the terms of this Consent Agreement and the attached Consent Order.

I. PRELIMINARY STATEMENT

A. On February 1, 1991, EPA published a Federal Register Notice (56 FR 4128) that set forth a TSCA Section 8(e) Compliance Audit Program and announced the opportunity for all regulated parties to register for and participate in the TSCA Section 8(e) Compliance Audit Program. On April 26, 1991 and June 20, 1991, EPA published Federal Register Notices (56 FR 19514 and 56 FR 28458) which modified certain terms of the TSCA Section 8(e) Compliance Audit Program.

B. On or about July 5, 1991, E.I. du Pont de Nemours and Co. registered for the TSCA Section 8(e) Compliance Audit Program by signing a "Registration and Agreement for TSCA Section 8(e)

Compliance Audit Program" ("CAP Agreement") identified as [Attachment A].

C. On or about January 31, 1992, EPA mailed the "Addendum to the CAP Agreement" (the "Addendum") to Respondent to modify the CAP Agreement only regarding the reporting of information on the release of chemical substances to and detection of chemical substances in all environmental media. The deadline for reporting all other information under the TSCA Section 8(e), CAP remained unchanged at February 28, 1992 unless otherwise extended. Respondent submitted the Addendum to EPA on September 26, 1992; however, EPA presently has no record of an Addendum for Respondent.

D. On or about June 27, 1996, Respondent entered into an agreement with EPA entitled "Revised Addendum to the TSCA Section 8(e) CAP Agreement" ("Revised Addendum") to supersede the "Addendum to the CAP Agreement" and to modify the "Registration and Agreement for TSCA Section 8(e) Compliance Audit Program" to specify that the Respondent (referred to as the Regulatee in the Revised Addendum) is no longer required to conduct a file search for information on the release of chemical substances to and detection of chemical substances in environmental media, or for environmental toxicity data on plant effluents; and that a second Final Report is no longer necessary. Therefore, the first Final Report becomes the controlling document described in Unit II.A.8. of the CAP Agreement. The Revised Addendum is identified as Attachment B and is incorporated herein by reference.

E. The CAP Agreement, incorporated herein by reference, states that EPA and the Respondent enter into and consent to the terms of the CAP Agreement, agree to fully comply with the terms of the CAP Agreement, and that the Respondent neither admits nor denies that the studies or reports listed or submitted by the Respondent pursuant to the terms of the CAP Agreement and any study or report listed or submitted pursuant to the CAP Agreement constitute admission of a violation of TSCA Sections 8(e) and 15 (3) (B), but agrees to settle this matter by payment of a stipulated civil penalty for each study or report in accordance with Units II.B.2 and 3 of the CAP Agreement.

F. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA" or "the Act") 15 U.S.C. §2601 et seq. by initiating an administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), filed on or about September 6, 1996.

The

Complaint alleges that Respondent failed to immediately inform the Administrator of the studies or reports identified in Paragraph 12 of the complaint in violation of Section 8(e) of TSCA, 15 U.S.C. Section 2607(e) and TSCA Section 15(3)(B), 15 U.S.C. Section 2614(3)(B), which states that it is unlawful for any person to fail to submit information required by TSCA.

G. Respondent stipulates that (1) EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim for which relief can be granted against

Respondent; (2) it neither admits nor denies the findings of fact and conclusions of law contained in this Consent Agreement; (3) consents to the terms of settlement set forth in Part V of this Consent Agreement, and the Consent Order; and (4) waives any defenses it might have as to venue.

H. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint.

## II. EPA FINDINGS OF FACT

A. Paragraphs 1-11 of the Complaint are incorporated herein by reference as EPA's Findings of Fact in this matter.

B. EPA and the Respondent mutually initiated a TSCA Section 8(e) Compliance Audit Program on or about July 5, 1991, when Respondent registered for the TSCA Section 8(e) Compliance Audit Program by signing a CAP Agreement identified as CAP ID#:8ECAP-0025.

C. The CAP Agreement states that EPA and the Respondent consent to and agree to fully comply with the terms of the CAP Agreement. The Respondent agrees to pay stipulated civil penalties for all studies or reports submitted under the CAP Agreement as TSCA Section 8(e) data.

D. On or about October 26, 1992, Respondent timely submitted a Final Report in accordance with Unit II.C.4 of the CAP Agreement. The Final Report certified completion of the TSCA Section 8(e) Compliance Audit Program and listed each study or



report listed or submitted under the terms of the CAP Agreement (including Appendix A thereof). The Final Report indicated that a total of one thousand three hundred eighty (1380) studies were listed or submitted as TSCA Section 8(e) data pursuant to the CAP Agreement, with twenty four (24) in the fifteen thousand dollar (\$15,000) category pursuant to Unit II.B.2.a. of the CAP Agreement, and one thousand two hundred eighty seven (1287) in the six thousand dollar (\$6,000) category pursuant to Unit II.B.2.b. of the CAP Agreement, and sixty nine (69) in the five thousand dollar (\$5,000) category pursuant to Unit II.B.3.b. of the CAP Agreement.

### III. EPA CONCLUSIONS OF LAW

EPA concludes that the EPA Findings of Fact in Section II above, constitute a violation of TSCA Sections 8(e) and 15(3)(B) for which a penalty may be assessed pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

### IV. CIVIL PENALTY

Pursuant to Units II.B.2 and 3 of the CAP Agreement entered into between EPA and the Respondent, Respondent agreed to pay the following stipulated penalties for all studies or reports listed or submitted under the TSCA Section 8(e) Compliance Audit Program: fifteen thousand dollars (\$15,000) per study for any submitted study or report involving effects in humans; six

thousand dollars (\$6,000) per study for any other study or report submitted as TSCA Section 8(e) data; and five thousand dollars (\$5,000) per study for any study or report listed pursuant to Appendix A or listed as data that would have been reportable under TSCA Section 8(e) when initially obtained by the Respondent, and that subsequent to the TSCA Section 8(e) Policy Statement (and before June 18, 1991), were (i) submitted in writing to the EPA and received by the EPA pursuant to a mandatory reporting requirement under TSCA or another statute administered by EPA, or (ii) received by the Office of Pollution Prevention and Toxics (OPPT) (formerly the Office of Toxic Substances) on an "FYI" basis and included in the formal OPPT "FYI" filing system. Under the CAP Agreement, EPA agreed to limit the total stipulated penalty to one million dollars (\$1,000,000). Based on EPA's evaluation of the Final Report submitted by Respondent, the total civil penalty is one million dollars (\$1,000,000).

#### V. TERMS OF SETTLEMENT

A. This Consent Agreement and Consent Order shall be a complete settlement of all administrative claims and civil causes of action alleged in the Complaint.

B. Respondent affirms that, with respect to the studies or reports listed or submitted as TSCA Section 8(e) information pursuant to the terms of the CAP Agreement, E.I. du Pont de

Nemours and Co. is now in full compliance with Section 8(e) of TSCA.

C. Respondent agrees to the payment of a civil penalty in the sum of one million dollars (\$1,000,000). Respondent shall pay half of the civil penalty by forwarding a cashier's or certified check, within thirty (30) calendar days of receipt of the Consent Order, payable to the order of the "Treasurer of the United States of America" in the amount of at least five hundred thousand (\$500,000). Respondent shall pay the remainder of the civil penalty, by no later than January 15, 1997, by forwarding a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of the remainder, which shall result in a total civil penalty of one million dollars (\$1,000,000). The checks shall indicate that they are for "TSCA-96-H-47" and shall be mailed to:

U.S. Environmental Protection Agency  
Hearing Clerk  
P.O. Lock Box 360277M  
Pittsburgh, PA 15251

D. To ensure a record of compliance with Part V of this Consent Agreement, Respondent shall forward a copy of the check to EPA, in care of:

Brian Dyer  
RE: CAP ID#:8ECAP-0025  
U.S. Environmental Protection Agency  
Toxics and Pesticides Enforcement Division (2245A)  
401 M Street, S.W.  
Washington, DC 20460

E. If Respondent fails to remit the civil penalty as agreed to herein, EPA is entitled to assess interest and penalties on

debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest, at the statutory judgment rate provided for in 28 U.S.C. § 1961, will therefore begin to accrue on the civil penalty if it is not paid within thirty (30) calendar days of the date of execution of the Consent Order. Respondent also agrees to pay a stipulated penalty of one thousand dollars (\$1,000.00) per day in addition to interest as allowed by law, unless EPA in writing excuses or mitigates the stipulated penalty. EPA will excuse or mitigate the stipulated penalty if EPA determines after an appropriate showing by Respondent that the failure to comply occurred despite the exercise of good faith and due diligence by the Respondent.

F. Pursuant to Section of 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), failure by Respondent to pay any civil penalty under this Consent Agreement in a timely manner pursuant to Part V.C and E may result in the forwarding of this action to the United States Department of Justice for collection of the amount due, plus stipulated penalties, interest, and a charge to cover the cost of processing and handling a delinquent claim. This provision does not limit the EPA from using any or all other remedies available at law and in equity to enforce this Consent Agreement.

#### VI. OTHER MATTERS



A. Nothing in this Consent Agreement and Consent Order shall relieve Respondent of the duty to comply with all applicable provisions of TSCA and other environmental statutes.

B. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

C. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Consent Agreement.

D. The provisions of this Consent Agreement and Order shall apply to and be binding on the Parties, their officers, directors, employees, successors, and assigns upon execution of the Consent Order by the Environmental Appeals Board or its delegatee.

E. Respondent's obligations under this Consent Agreement shall end when Respondent has performed all of the terms of the Consent Agreement, including payment of civil penalties, as appropriate, in accordance with the Consent Order in this matter.

F. The penalty specified in Paragraph C of Part V, above, shall represent civil penalties assessed by EPA. Respondent shall not treat this civil penalty as a deduction for purposes of Federal taxes.

G. The Consent Order shall have the same force and effect as a final order as defined in 40 C.F.R. § 22.03, and as used in "Guidelines for Assessment of Civil Penalties Under Section 16 of

WE AGREE TO THIS:

For Respondent: <sup>(ARM)</sup>

Paul V. Tebo

Name - PAUL V. TEBO  
Title - VICE-PRESIDENT, SAFETY, HEALTH,  
Company - AND ENVIRONMENT  
E. I. du Pont de Nemours and Company  
CAP ID: 8ECAP-0025

9/27/96  
Date  
September 27, 1996

For Complainant:

Jesse Baskerville/mc

Jesse Baskerville, Director  
Toxics and Pesticides Enforcement Division  
Office of Regulatory Enforcement

9/30/96  
Date

Mark Ahearn

Caroline C. Ahearn, Attorney  
Toxics and Pesticides Enforcement Division  
Office of Regulatory Enforcement

9/30/96  
Date

the Toxic Substances Control Act", 45 Fed. Reg. 59770 (September 10, 1980).

H. All of the terms and conditions of this Consent Agreement together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions.

I. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES

REGISTRATION AND AGREEMENT FOR TSCA SECTION 8(e)  
COMPLIANCE AUDIT PROGRAM

The United States Environmental Protection Agency ("EPA") and the Regulatee, the Parties herein, wishing to register for and enter into this Agreement for a Toxic Substances Control Act ("TSCA") Section 8(e) Compliance Audit Program ("CAP Agreement") and having consented to the terms of this CAP Agreement do therefore agree to fully comply with the terms of this CAP Agreement.

I. Registration Requirements

A. The Regulatee agrees to conduct a TSCA Section 8(e) Compliance Audit Program to determine its compliance status with TSCA section 8(e).

B. To register for the TSCA Section 8(e) Compliance Audit Program, the Regulatee must, no later than July 1, 1991, sign and return this CAP Agreement by certified mail-return receipt requested to:

Michael F. Wood, Director,  
Compliance Division (EN-342),  
Office of Compliance Monitoring,  
Environmental Protection Agency,  
401 M St., SW.,  
Washington, DC 20460.

C. After EPA receives this signed CAP Agreement from the Regulatee, EPA will sign this CAP Agreement and enter the following identification number (8E CAP-0025) to the copy of this CAP Agreement which will be returned to the Regulatee. The Final Report and all other documents submitted pursuant to Unit II.C of this CAP Agreement must display the identification number established by this paragraph.

D. The TSCA Section 8(e) Compliance Audit Program shall commence no later than July 1, 1991.

E. The TSCA Section 8(e) Compliance Audit Program shall terminate on February 28, 1992, and all submissions under this TSCA Section 8(e) Compliance Audit Program must be delivered to EPA no later than February 28, 1992. The Regulatee may petition EPA in writing at the address specified in Unit I.B of this CAP Agreement for an extension of the February 28, 1992, termination date. Extension requests must be received by EPA no later than November 29, 1991, and must contain an adequate justification for the extension.

ATTACHMENT A



## II. Terms of Agreement

EPA and the Regulatee mutually initiated this TSCA Section 8(e) Compliance Audit Program in response to February, April, and June 1991, Federal Register notices announcing the opportunity to participate in the TSCA Section 8(e) Compliance Audit Program. As part of this CAP Agreement, EPA and the Regulatee agree to the following:

### A. General Provisions

1. This CAP Agreement and the Consent Agreement and Consent Order in this matter shall be a complete settlement of all civil and administrative claims and causes of action which arose or could have arisen under TSCA section 8(e) in connection with any study or report listed or submitted pursuant to the terms of this CAP Agreement. Pursuant to TSCA, EPA will consider ability to pay/effect on ability to continue to do business claims during the course of development of the Consent Agreement and Consent Order in this matter. The Regulatee will be responsible for submitting adequate documentation of such claims to EPA at the time of submission of the Final Report required by this CAP Agreement.

2. For purposes of this CAP Agreement and any subsequent proceeding, without trial or any adjudication of the facts, the Regulatee admits that EPA has jurisdiction over the subject matter of the terms of this CAP Agreement and any study or report listed or submitted pursuant to this CAP Agreement.

3. The Regulatee waives its right to request a judicial or administrative hearing, under TSCA section 16(a)(2)(A) or other provisions of law, on any issue of law or fact that has arisen or may arise regarding the application of TSCA section 8(e) to any study or report listed or submitted pursuant to Unit II.B.1 of this CAP Agreement.

4. The Regulatee neither admits nor denies that the listing or submission of studies or reports by the Regulatee under this TSCA Section 8(e) Compliance Audit Program and pursuant to the terms of this CAP Agreement constitutes admission of a violation of TSCA sections 8(e) and 15(3)(B), but agrees to pay a stipulated civil penalty for each study or report in accordance with Units II.B.2 and 3 of this CAP Agreement. Any study or report submitted under TSCA section 8(e) prior to the date of commencement of the TSCA Section 8(e) Compliance Audit Program is not subject to the terms of this CAP Agreement or the TSCA Section 8(e) Compliance Audit Program.

5. EPA reserves its rights under TSCA section 16 to take appropriate enforcement action if EPA determines later that the Regulatee was required to submit under TSCA section 8(e) a study or report determined by the Regulatee to be not reportable and therefore not listed or submitted under the TSCA Section 8(e) Compliance Audit Program. In such event, the terms of the EPA TSCA Sections 8, 12, and 13 Enforcement Response Policy will apply to such proceeding.

6. EPA reserves its rights to challenge the categorization of studies or reports submitted or listed under this TSCA Section 8(e) Compliance Audit Program pursuant to the requirements of Units II.B.2.a and b and II.B.3 of this CAP Agreement.

7. EPA agrees that any listing or submission made pursuant to the terms of this CAP Agreement and the TSCA Section 8(e) Compliance Audit Program will be viewed by EPA as one "prior such violation" under TSCA section 16(a)(2)(B) for future violations of TSCA section 8(e) only.

8. The Final Report submitted pursuant to Unit II.C.4 of this CAP Agreement shall be the controlling document for purposes of determining what was listed or submitted under the TSCA Section 8(e) Compliance Audit Program and this CAP Agreement.

9. Any listing or submission made by the Regulatee to EPA that does not meet all of the requirements of the TSCA Section 8(e) Compliance Audit Program and this CAP Agreement is subject to the EPA TSCA Sections 8, 12, and 13 Enforcement Response Policy.

#### B. TSCA Section 8(e) Compliance Audit Program and Civil Penalties

1. In conducting the TSCA Section 8(e) Compliance Audit Program, the Regulatee shall follow the statutory language of TSCA section 8(e) and EPA's guidance on section 8(e) in the March 16, 1978, "Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk" (43 FR 11110) ("TSCA Section 8(e) Policy Statement"), with the exception of Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement, to determine whether the reviewed study or report is:

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1. In determining whether the kind of information or studies referenced in Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement (i.e., widespread and previously unsuspected distribution in environmental media and emergency incidents of environmental contamination) should be submitted under the TSCA Section 8(e) Compliance Audit Program, the Regulatee should make a reasonable judgement whether such information meets the statutory standards of TSCA section 8(e) instead of relying on the guidance in Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement.

- a. Not reportable under TSCA Section 8(e): The Regulatee will not list or submit the study or report.
- b. Reportable under TSCA Section 8(e): The Regulatee will submit the study or report.
- c. Data that would have been reportable under TSCA section 8(e) when initially obtained by the Regulatee, and that subsequent to the section 8(e) reporting deadline (and before June 18, 1991), were (i) submitted in writing to and received by EPA pursuant to a mandatory reporting requirement of TSCA or another statute administered by EPA, or (ii) received by the Office of Toxic Substances (OTS) on a "For Your Information" ("FYI") basis and included in the formal OTS "FYI" filing system: The Regulatee will list the study or report pursuant to Unit II.B.3 of this CAP Agreement. Only information that meets the requirements of Unit II.B.1.c is eligible for this listing provision.

Upon Registration for the TSCA Section 8(e) Compliance Audit Program, the Regulatee will receive a copy of the TSCA Section 8(e) Policy Statement, the publication numbers of publicly available and previously published volumes of Section 8(e) "Status Reports" available through the National Technical Information Service, copies of Question and Answer documents developed in response to specific questions involving section 8(e), a document entitled "Substantiating Claims of Confidentiality," and a TSCA section 8(e) reporting guide.

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2. The Regulatee agrees to pay the following stipulated civil penalties for all studies or reports submitted under this TSCA Section 8(e) Compliance Audit Program as TSCA section 8(e) data:

- a. \$15,000 per study for any submitted study or report involving effects in humans.
- b. \$6,000 per study for any other submitted study or report submitted as TSCA section 8(e) data.

3. The following provisions shall govern the list required to be submitted under Unit II.B.1.c of this CAP Agreement:

- a. For each study or report listed, the listing must comply with the requirements of Unit II.C of this CAP Agreement, must describe the date of the submission and (i) the mandatory reporting requirement of TSCA or another EPA-administered statute under which the study or report was submitted, or (ii) the Office of Toxic Substances "FYI" filing system number for the submission. Within 360 days after submission of the list, EPA may request the Regulatee to submit any of



the listed information in order to determine if the Regulatee correctly listed rather than submitted the study or report.

- b. The Regulatee agrees to pay the following stipulated civil penalty for information listed under this audit as data that would have been reportable under TSCA Section 8(e) when initially obtained by the Regulatee, and that subsequent to the section 8(e) reporting deadline as specified in Part IV of the TSCA Section 8(e) Policy Statement (and before June 18, 1991), were (i) submitted in writing to and received by EPA pursuant to a mandatory reporting requirement under TSCA or another statute administered by EPA, or (ii) received by the Office of Toxic Substances (OTS) on an "FYI" basis and included in the formal OTS "FYI" filing system: \$5,000 per study or report.

As a matter of policy under this TSCA Section 8(e) Compliance Audit Program, EPA agrees to a \$1,000,000 cap on the total civil penalty for the Regulatee.

4. The Regulatee shall be exempt from any additional late and/or nonreporting TSCA section 8(e) civil liability which arose or could have arisen for any study or report submitted or listed under this TSCA Section 8(e) Compliance Audit Program.

5. Upon termination of the TSCA Section 8(e) Compliance Audit Program, the Regulatee shall provide EPA with a Final Report certifying that the TSCA Section 8(e) Compliance Audit Program has been completed. Such Final Report shall be signed and certified by the appropriate corporate official with authority to settle claims on behalf of the Regulatee. Such Final Report shall also comply with the requirements of Unit II.C.4 of this CAP Agreement.

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6. Following termination of the audit, EPA will present the Regulatee with a Consent Agreement and Consent Order summarizing the results of the TSCA Section 8(e) Compliance Audit Program and specifying the terms of payment of stipulated civil penalties. The Regulatee will have 30 calendar days from its receipt of an executed copy of the Consent Order to pay any stipulated civil penalties.

#### C. Information Submission and Final Report

1. All studies or reports listed or submitted to EPA by the Regulatee under the terms of this CAP Agreement shall be identified pursuant to the categories established in Units II.B.2.a and b and II.B.3 of this CAP Agreement, and shall be sent to the following address:



Document Processing Center (TS-790),  
Office of Toxic Substances,  
Environmental Protection Agency,  
401 M St., SW.,  
Washington, DC 20460.  
Attn: Section 8(e) Coordinator (CAP Agreement)

2. The Regulatee shall submit one original and two full copies of all cover letters, studies, reports, lists, substantiations of confidentiality claims, and, as appropriate, sanitized copies of cover letters, studies, reports, lists, or substantiations of confidentiality claims.

3. In accordance with Part IX of the TSCA Section 8(e) Policy Statement, each study or report listed or submitted to EPA by the Regulatee under the terms of this CAP Agreement shall be accompanied by a separate cover letter containing the following information:

- a. Company name, address and telephone number.
- b. The signature and printed name, title and telephone number of the person listing or submitting the study or report.
- c. A clear statement that the document, identified on the cover letter by the identification number established by Unit I.C of this CAP Agreement, is being submitted or listed pursuant to the TSCA Section 8(e) Compliance Audit Program and this CAP Agreement.
- d. The exact identity of each tested chemical or mixture or component of a tested mixture including the CAS Registry Number, if known.
- e. The title of the listed or accompanying study or report.
- f. A full summary of the reportable adverse effect(s) or exposure(s) observed in the listed or accompanying study or report. In addition, the cover letter should identify by EPA Document Control Number any previous TSCA section 8(e) submission(s) or premanufacture notification(s) (PMN(s)) submitted by the Regulatee on the subject chemical substance(s) or mixture or component(s) of such mixture.

4. Each study or report listed or submitted to EPA by the Regulatee under the terms of this CAP Agreement shall be listed in a Final Report. Such Final Report shall list each listed or submitted study or report by title pursuant to the categories established in Units II.B.2.a and b and II.B.3 of this CAP Agreement, and shall display the identification number established by Unit I.C of this CAP Agreement. Such Final Report shall certify that the TSCA Section 8(e) Compliance Audit has

been completed and include the following statement: "I certify that the information contained in or accompanying this Final Report is true, accurate, and complete. As to any identified portion(s) of this Final Report for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete." The Final Report will be the controlling document as to what was or was not submitted under the terms of this CAP Agreement and shall be sent to the address specified in Unit I.B of this CAP Agreement.

D. Other Matters

1. Nothing in this CAP Agreement shall relieve the Regulatee from complying with all applicable TSCA regulations or other applicable environmental statutes.

2. This CAP Agreement shall be binding upon the Parties and in full effect pursuant to the requirements specified in Unit I. of this CAP Agreement.

3. The Regulatee's obligations under this CAP Agreement shall end when the Final Report required by Unit II.C.4 of this CAP Agreement has been submitted to EPA and stipulated civil penalties paid.

4. Failure to comply with the terms of this CAP Agreement permits EPA to proceed under TSCA section 16 to impose the civil penalties allowable under the existing EPA TSCA Sections 8, 12, and 13 Enforcement Response Policy for any study or report listed or submitted pursuant to Unit II.C of this CAP Agreement.

5. All of the terms and conditions of this CAP Agreement together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this CAP Agreement (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAP Agreement shall be null and void.

6. The Regulatee may assert claims of confidentiality under TSCA section 14 for submissions under this CAP Agreement. The Regulatee must, at the time of submission, provide substantiation for all information claimed as confidential. The Regulatee agrees that the failure to assert a claim of confidentiality for studies, reports, or information submitted under the terms of this CAP Agreement shall be interpreted by EPA as a waiver by the Regulatee of the right to assert a claim of confidentiality.

7. Submissions containing information claimed as TSCA Confidential Business Information (TSCA CBI) shall contain cover sheets bearing the typed or stamped legend "company confidential," "proprietary," or "trade secret." Information contained in the submission which is claimed as TSCA CBI must be clearly marked by boxing, circling, or underlining the specific text so claimed. All pages containing such information shall also be marked "CONFIDENTIAL." Care should be taken to ensure that these markings do not obscure the text of the submission. Submissions directed to EPA in this manner should be sent by certified mail-return receipt requested or in any other way which will permit verification by the Regulatee of its receipt by EPA.

8. If the Regulatee chooses to assert a confidentiality claim, the Regulatee shall provide two sets of each such submission: ~~one set shall have the TSCA CBI material marked in~~ the manner contemplated under 40 CFR 2.203(b) and Unit II.D.7 of this CAP Agreement; the second set shall have the TSCA CBI material excised. The Regulatee is advised that the second, "sanitized" set will be available for public review without further notice to the Regulatee and therefore care should be exercised in the creation of this set. Each sanitized and unsanitized submission must comply with Unit II.C.2 of this CAP Agreement and thus will consist of one original and two copies.

9. The Regulatee is advised to review carefully the confidentiality claim procedures at 40 CFR 2.201. Specific information concerning TSCA section 8(e) confidentiality claims is contained at Part X of the TSCA Section 8(e) Policy Statement.

10. The Regulatee agrees that if the specific chemical identity is claimed as confidential in a submission, a generic non-confidential chemical identity will be included on the ~~sanitized version of the submission.~~ Guidance for developing appropriate generic chemical identities may be obtained by consulting the TSCA Chemical Substance Inventory: 1985 Edition, or by contacting the Office of Toxic Substances' Chemical Inventory Section at (202) 382-3527.

11. The Regulatee agrees that confidentiality claims will be honored by EPA only if each claim is accompanied by responses to the questions in the document provided with this CAP Agreement entitled "Substantiating Claims of Confidentiality." The Regulatee shall provide an original and two copies of these responses in accordance with Unit II.C.2 of this CAP Agreement. The Regulatee shall also, in the event the Regulatee desires information in these responses to be considered TSCA CBI, provide a sanitized original and two copies in accordance with Unit II.C.2 and Unit II.D.8 of this CAP Agreement.

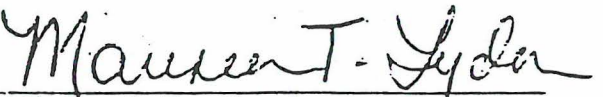


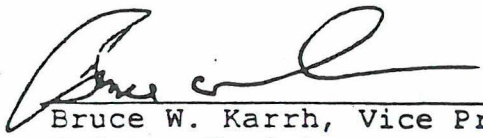
12. The Regulatee agrees that failure to adhere to each requirement pertaining to TSCA CBI may result in forfeiture of the CBI protection for the submission and its subsequent availability in its entirety for public review.

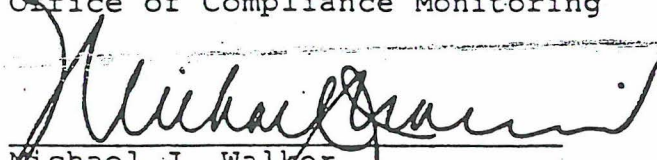
WE AGREE TO THIS:

For EPA:

For Regulatee<sup>2</sup>:

  
Michael F. Wood  
Director, Compliance Division  
Office of Compliance Monitoring

  
Bruce W. Karrh, Vice President of  
Safety, Health and  
Environmental Affairs *HL*

  
Michael J. Walker  
Associate Enforcement Counsel  
for Pesticides and Toxic  
Substances

<sup>2</sup> For the purposes of this CAP and to the extent that they may have Section 8(e) obligations in the United States, the "Regulatee" is E.I. Du Pont de Nemours and Co., on behalf of itself, its officers and employees and the Attachment 1-listed domestic entities, their officers and employees.



## Attachment 1

For the purposes of this CAP and to the extent that they may have Section 8(e) obligations in the United States, the "Regulatee" is E.I. Du Pont de Nemours and Co., on behalf of itself, its officers and employees and the Attachment 1-listed domestic entities, their officers and employees:

Du Pont Agrichemicals Caribe, Inc.  
Du Pont-Kansai Automotive Coatings Company  
NIACHLOR  
Du Pont Electronic Materials, Inc.  
Du Pont NDT Systems, Inc.  
PDO-US  
Du Pont Photomasks, Inc.  
~~Du Pont-Howson~~  
Du Pont-Fuji Electronic Imaging Co.  
Du Pont Specialty Imaging Media, Inc.  
ImagiTex, Inc.  
Imperial Metal & Chemical Company  
Toyo-Du Pont International Ink.  
Camex, Inc.  
Du Pont Designs Technology Inc.  
Du Pont NDT Systems, Inc.  
Lanxide Electronic Components, L.P.  
Lanxide Armor Products, Inc.  
Du Pont Lanxide Composites, Inc.  
Medal L.P.  
DPGP, Inc.  
Remington Arms Company, Inc.  
Du Pont Merk Pharmaceutical Co.  
Du Pont Pharmaceuticals, Inc.  
Du Pont Merk Pharma  
Conoco Inc.  
Conoco Carbon and Minerals, Inc.  
Louisiana Carbon Company  
Conoco Pipe Line Company  
Conoco Specialty Products, Inc.  
Venture Coke Company  
Douglas Oil Company of California  
Douglas Stations, Inc.  
Kayo Oil Company  
Jupiter Chemicals, Inc.  
Longhorn Pipeline Company  
Louisiana Gas System, Inc.

## Revised Addendum to the TSCA Section 8(e) CAP Agreement

This Revised Addendum supersedes the "Addendum to the CAP Agreement" and modifies the Registration and Agreement for TSCA Section 8(e) Compliance Audit Program as follows:

I. The TSCA Section 8(e) Compliance Audit Program, which the Regulatee agreed to conduct in the Registration requirement I.A. does not include: information on the release of chemical substances to and detection of chemical substances in environmental media; or environmental toxicity data on plant effluents. The Regulatee, therefore, is no longer required to conduct a file search for this information. Further, footnote 1 of the Agreement pertains solely to chemical release and detection information and therefore, is no longer applicable to the administration of the TSCA Section 8(e) Compliance Audit Program.

II. The first Final Report shall be considered the Final Report and controlling document, as described in Unit II.A.8, for purposes of determining the information listed or submitted under the TSCA Section 8(e) Compliance Audit Program. The first Final Report must have been submitted no later than February 28, 1992, unless an extension had been granted pursuant to Unit I.E. of the CAP Agreement.

III. EPA intends to publish final revised guidance in the Federal Register on reporting information on the release of chemical substances to and detection of chemical substances in environmental media. EPA also intends to publish a question and answer document to illustrate application of the guidance. The final revised guidance will not be effective prior to EPA's publication of the question and answer document.

IV. Impact of the final revised guidance on:

A. Information on the release of chemical substances to and detection of chemical substances in environmental media, or environmental toxicity data for plant effluents, that predates the effective date of the final revised guidance will not be the subject of an EPA TSCA section 8(e) penalty enforcement action.

B. Information on the release of chemical substances to and detection of chemical substances in environmental media, or environmental toxicity data for plant effluents, that may have been submitted under Phase 1 of the CAP Program will not result in the assessment of penalties for such studies or reports submitted under this TSCA Section 8(e) Compliance Audit Program.

V. Information generated after the effective date of new final revised guidance on the release of chemical substances to and detection of chemical substances in environmental media, or environmental toxicity data for plant effluents, will be submitted prospectively pursuant to TSCA Section 8(e) and the new final revised guidance, not the CAP Agreement. Therefore, no penalty will accrue under the CAP Agreement for the submission of such information.

WE AGREE TO THIS:

For EPA:

JUN 27 1996

For Regulatee:

Jesse Baskerville 6/27/96

Jesse Baskerville, Director  
Toxics and Pesticides  
Enforcement Division

Paul V. Tebo

E. I. du Pont de Nemours and Company  
CAP ID: 8ECAP-0025  
By: Paul V. Tebo  
Title: Vice President  
DuPont Safety, Health and  
Environment

CERTIFICATE OF SERVICE

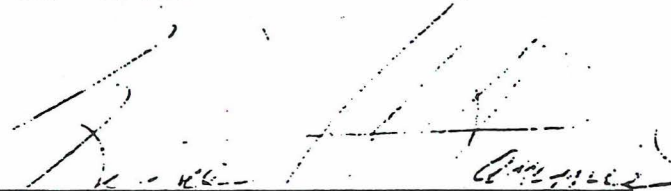
I do hereby certify that the foregoing Consent Agreement & Consent Order was filed In re E.I. du Pont de Nemours & Co. ; Docket No. TSCA-96-H-47 and copies of the same were mailed to the following:

(Interoffice)

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Washington, D.C. 20460

(Certified Mail)

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Wilmington, DE 19898

  
Bessie L. Hammiel, Hearing Clerk  
U.S.E.P.A. (1900)  
401 M Street, S.W.  
Washington, D.C. 20460

Oct. 8, 1996